IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICITON

WRIT PETITION NO.2301 OF 2006

M/s.Emar Hotels & Investments
(P) Limited, Mumbai .. Petitioner.

Versus

The Tax Recovery Officer,
Range 22(3) & Ors., Navi Mumbai .. Respondents.

Mr.F.Andhyarujina, senior counsel with Mr.Pramod Kumar Parida for the petitioner.

Mr.R.M. Sharma for the respondents.

CORAM : H.L. GOKHALE, &
J.P. DEVADHAR, JJ.

DATED : 16TH OCTOBER, 2006.

P.C. :

1. Heard Mr.Andhyarujina in support of this petition. Mr.Sharma appears for the respondents.

2. The premises being Office Nos.101 and 106 situated in Persepolis Premises at Vashi, Navi Mumbai are the subject matter of this petition. One Mr.K.N. Marathe who was earlier Director of Emar Hotels is in tax arrears. This hotel is stated to be owning the aforesaid premises which are attached for the tax dues of Mr.K.N. Marathe by issuing an order under Section 220(2) of the Income Tax Act. Thereafter, a garnishee notice is issued under Section 226 (3) of the Act to M/s.Bajaj Allianz to whom these flats have been let

out and they are directed to pay the rent payable to the tax recovery officer.

3. This order dated 7th January, 2005 was objected to by the petitioner, which objections have been considered and an order has been passed under Rule 11(5) of Schedule II of the Income Tax Rules on 15th April, 2005. The objections lodged by the petitioner have been rejected by that order and it is this order which is challenged in the present petition. Mr.Andhyarujina, learned counsel appearing for the petitioner has many things to say to challenge this order. However, what we notice is that as against the rejection of this objection, remedy by way of filing a suit is available under clause (6) of the above-referred Rule 11. This sub-clause (6) reads as follows :

> "Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive."

4. In view of availability of this alternative remedy, in our view the proper course for the

petitioner is to file a suit. When an effective alternative remedy is available to the party, the writ Court is normally not expected to interfere.

5. For the reasons stated above, we decline to entertain this petition. The petition is dismissed with no order as to costs.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)